UNITED STATES TAX COURT
WASHINGTON, DC 20217

JANICE LUCK O'CONNOR,	)	**CLC**
	)	
Petitioner(s),	)	
	)	
v.	)	Docket No. 2472-11.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	
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O R D E R

This case was on a trial calendar for Buffalo, New York but was continued and then moved onto a summary-judgment track after settlement talks stalled. It began with Ms. O'Connor's failure to file an income tax return for 2007. The IRS prepared a substitute return on her behalf and then sent her a notice of deficiency. Ms. O'Connor filed a petition with this Court. She doesn't contest the income calculations by the IRS but asserts that she can rightfully take a large charitable-deduction carryforward from a previous year. This would eliminate most of her deficiency for the 2007 year. The Commissioner argues that Ms. O'Connor is not entitled to that deduction because she failed to substantiate it as the law requires.

He also says there's no genuine dispute about any of the material facts and so moved for partial summary judgment.

Background

Ms. O'Connor didn't file a 2007 income tax return. The IRS filed a substitute return in 2010. After receiving a notice of deficiency, Ms. O'Connor filed a petition to contest the liability. As the case progressed, she submitted a Form 1040 that included a $318,100 charitable deduction. The deduction was born

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from a donation of land to the Orange County Land Trust from Deerfield Farm LP. Ms. O'Connor was a 49.5 percent partner in this limited partnership and also served as its general partner. In that capacity she had signed off on a donation of 145 acres of farm land from Deerfield to the Land Trust back in 2005. Deerfield executed a bargain and sale deed for the transfer of the 145 acres in September 2005. The deed indicated that the transfer was from Deerfield to the Land Trust "in consideration of Ten and no/100 Dollars." Ms. O'Connor signed the deed in front of a notary. Attached to the deed was a cover page for recording purposes that listed the taxable consideration as "$0."

This was a donation of Deerfield's entire interest in the land -- this is not another conservation-easement case -- but the deed that transferred the property to the Land Trust did contain several restrictions. These included that the land not be open to the public and that no permanent structures could be built on it. Deerfield valued the donation at $900,000, after it got an appraiser to determine the fair market value of the land before the contribution. The appraiser valued the land as if no restrictions were placed in the deed because the restrictions were at the request of the Land Trust and not Deerfield.

Ms. O'Connor's share of the donation as a result of the flow-through was $447,570. She claimed the entire amount as a deduction on her 2005 return but $318,100 of it was carried forward. She didn't use any of the carryforward during 2006.[1]

Ms. O'Connor included the remaining $318,100 deduction on her proposed 2007 Form 1040. She attached an incomplete appraisal summary Form 8283 to this proposed return. The Commissioner denied the charitable deduction for lack of substantiation. He has now moved for partial summary judgment on the grounds that Ms. O'Connor's portion of the donation of farmland fails to be a

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[1] I.R.C. § 170(b)(1) limits a taxpayer's deduction for a charitable contribution to a specified percentage -- usually 20-50% depending on the type of property contributed and the type of recipient organization -- of her adjusted gross income (before net operating loss carrybacks). *See* I.R.C. § 170(b)(1)(G). If she contributes more than she can deduct in a single tax year because of these percentage limitations, she can carry the excess forward up to five years and will be subject to the adjusted-gross-income limitations of those future years. I.R.C. § 170(d)(1)(A).

charitable deduction under I.R.C. § 170 as a matter of law.[2] Ms. O'Connor argues that the paperwork she submitted satisfactorily substantiates the deduction.

Discussion

We may grant summary judgment when there is no genuine dispute of any material fact and a party is entitled to judgment as a matter of law. Rule 121(b); *Sundstrand Corp. v. Commissioner*, 98 T.C. 518, 520 (1992). The moving party bears the burden of proving there is no genuine dispute of material fact and we read factual inferences in a manner most favorable to the nonmoving party. *Dahlstrom v. Commissioner*, 85 T.C. 812, 821 (1985).

The Commissioner argues that Ms. O'Connor can't take the charitable deduction for two reasons: (1) the lack of a qualified appraisal of the farmland as required by 26 C.F.R. § 1.170A-13(c); and (2) her failure to produce a contemporaneous written acknowledgment from the Land Trust as required by I.R.C. § 170(f)(8). Ms. O'Connor argues that although the appraisal of the land didn't satisfy every requirement of 26 C.F.R. § 1.170A-13(c)(3), it met enough requirements to substantially satisfy them, and that the deed and documents submitted with it are an adequate acknowledgment.

We will begin with an analysis of whether there was a qualified appraisal.

A taxpayer must provide a qualified appraisal for certain non-cash donations, including a donation of property such as this one worth more than $5,000. 26 C.F.R. § 1.170A-13(c)(1)(i). The regulation has a long list of what exactly makes an appraisal a "qualified appraisal."

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[2] The Commissioner believes the entire $900,000 donation fails to be a charitable deduction. But, Ms. O'Connor's previous use of a portion of her $447,570 flow through in 2005 is beyond contention by the Commissioner due to the statute of limitations.

It can't be made earlier than sixty days before the contribution. 26 C.F.R. § 1.170A-13(c)(3)(i)(A).

It must include "the terms of any agreement or understanding entered into * * * by or on behalf of the donor or donee that relates to the use, sale, or other disposition of the property contributed." 26 C.F.R. § 1.170A-13(c)(3)(ii)(D).

It must be made by a "qualified appraiser" -- a term with its own elaborate definition. 26 C.F.R. § 1.170A-13(c)(3)(i)(B).

Some of these requirements are more important than others, and we have at times applied a standard of substantial compliance instead of perfect compliance as we analyze a particular contribution. *See Bond v. Commissioner*, 100 T.C. 32, 40-41 (1993). The Commissioner argues that the substantial-compliance standard is no longer appropriate after the Supreme Court's decision in *Mayo Foundation for Medical Educ. and Research v. United States*, 562 U.S. 44 (2011). We note the Commissioner's preservation of this issue, but we've continued to apply this standard post-*Mayo*. *See, e.g.*, *Friedberg v. Commissioner*, 102 T.C.M. (CCH) 357, 362 (2011). We will do so again here.

We can and have forgiven a number of the shortcomings that are indisputably present in Ms. O'Connor's qualified appraisal. Using a substantial-compliance standard, we have found that an appraisal was qualified even though the partnership obtained it more than sixty days before the contribution, even though the appraisal failed to state that it was prepared for income-tax purposes, and even though the appraisal estimated the fair market value on the date of appraisal instead of on the date of the expected contribution. *See, e.g.*, *Consolidated Investors Group v. Commissioner*, 98 T.C.M. (CCH) 601, 613-14 (2009). We look to see if "the information provided to respondent was sufficient to permit respondent to evaluate the partnership's reported contribution and monitor and address concerns about overvaluation and other aspects of the reported charitable contribution." *Id.* at 614. In *Consolidated*, we found that those shortcomings were insubstantial.

We can't say the same here.

Here there were restrictive covenants in the deed. The appraiser determined the land's fair market value without regard to their effect. A letter from the appraiser admits that it didn't consider the restrictions. It does state that Deerfield

transferred all of its rights in the property to the Land Trust and that the restrictions in the deed were included at the request of the Land Trust itself. For this reason, the appraiser valued the land at a market value without consideration of the restrictions. The appraiser felt that the FMV wasn't diminished by the donor but by the donee.

The record doesn't affirmatively show whether the restrictions were the intent of the donor or the donee. But it doesn't matter. "[T]he fair market value of contributed property must take into account any restrictions or conditions limiting the property's marketability on the date of the contribution." *Rolfs v. Commissioner*, 135 T.C. 471, 489 (2010). And "[t]he restrictions or conditions that must be taken into account include those imposed by the donor incident to the contribution of the property." *Id.* Ms. O'Connor might argue that these restrictions weren't imposed by her because the Land Trust requested them, but this argument would fail. In *Rolfs* we cited *Deukmejian v. Commissioner*, 41 T.C.M. (CCH) 738 (1981). *Rolfs*, 135 T.C. at 489. In *Deukmejian*, we held that the taxpayer's contribution wasn't properly valued because he didn't take into account restrictions placed in the deed when he transferred property to the city. 41 T.C.M. (CCH) at 742-43. We reached this decision even though "this restriction was placed in the deed at the insistence of city officials to insure that the property would not be used for any purposes other than for open space and public utilities." *Id.* at 740. The appraiser here was similarly required to consider the restrictions placed in the deed, regardless of which party wanted them. The appraiser failed to do so. Some of the restrictions, such as the prohibition on building any permanent structures on the land, could've had a significant impact on the valuation; or perhaps they wouldn't. But our precedents say the appraiser had to take these restrictions into account.

This shortcoming would prevent the Commissioner from properly valuing the contributed property. This means that Ms. O'Connor failed to get a qualified appraisal even under a substantial-compliance standard. Without a qualified appraisal, we must deny Ms. O'Connor a charitable deduction under I.R.C. § 170.

It is therefore

ORDERED that respondent's motion for partial summary judgment is granted. It is also

ORDERED that on or before March 17, 2017 the parties submit settlement documents or file a status report describing their progress toward settlement or a narrowing of the issues to be tried.

(Signed) Mark V. Holmes
Judge

Dated: Washington, D.C.
January 18, 2017